BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PAMELA G. SUTTON	)	
Claimant	)	
VS.	)	
	)	Docket No. 230,124
GIBSONS DISCOUNT CENTER	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appeal from a May 28, 1998 preliminary hearing Order for Medical Treatment entered by Special Administrative Law Judge William F. Morrissey.

ISSUES

The Special ALJ granted claimant's request for medical treatment. Respondent seeks review contending the Special ALJ exceeded his authority in granting medical benefits because claimant failed to make timely written claim.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This single-docketed claim involves two separate accidents which occurred on July 12, 1996 and July 23, 1996. An accident report dated August 7, 1996 was filed with the Division of Workers Compensation on August 12, 1996 for the July 12, 1996 accident. The employer failed to file an accident report for the July 23, 1996 accident. In both instances claimant was immediately sent by the employer for medical treatment. Thus, for both accidents the employer failed to file the required report to the Director within 28 days

[1] K.S.A. 44-520a(a).

after having knowledge of the claimant's injuries.[2] This extends the time for filing written claim from 200 days to 1 year.[3]

Claimant received treatment from several physicians including orthopedic surgeon Alexander B. Neel, M.D., and physiatrist Pedro Murati, M.D. On October 16, 1996 claimant was released from medical treatment without restrictions but was advised that if she were to begin a job that required lifting, it would be recommended that she first participate in a strengthening program. Respondent's insurance carrier reports it last made payment for this medical treatment on December 17, 1996.

Claimant testified that she continued to have symptoms and, on September 15, 1997, her husband called the workers compensation insurance carrier to request authorization for additional medical treatment. Claimant was authorized to return to Dr. Neel for an evaluation of her current medical condition. Dr. Neel's progress notes report seeing claimant on September 18, 1997 for an office visit to recheck her neck and back. He opined "[a]t this point, I think we are best served by having her see Dr. Murati once more for CI greater occipital trigger point injection. If this fails would consider a visit to the neurologist. I think she can work at this time with restrictions of no lifting over 10 pounds, no repetitive stooping, bending or kneeling." Respondent admits it authorized and paid for this office visit with Dr. Neel, but the date of that payment is not in evidence. Respondent's insurance carrier, however, refused to authorize the additional treatment recommended by Dr. Neel.

The time for making written claim commences from the date of accident or "the date of the last payment of compensation."[4] The furnishing of medical care has been determined to constitute the payment of compensation.[5] The parties agreed that claimant first made written claim for compensation on December 18, 1997. Respondent, however, argues that claimant's September 18, 1997 office visit with Dr. Neel does not constitute the furnishing of compensation because it was a medical examination and not medical treatment. Respondent contends that claimant received no "medical treatment" on

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[2] K.S.A. 44-557(a).

[3] K.S.A. 44-557(c); Childress v. Childress Painting Co., 226 Kan. 251, 597 P.2d 637 (1979); Lawrence v. Cobler, 22 Kan. App. 2d 291, 915 P. 2d 157 (1996).

[4] K.S.A. 44-520a(a).

[5] Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971); Riedel v. Gage Plumbing & Heating Co., 202 Kan. 538, 449 P. 2d 521 (1969); Ricker v. Yellow Transit Freight Lines, Inc., 191 Kan. 151, 379 P. 2d 279 (1963); Sparks v. Wichita White Truck Trailer Center, Inc., 7 Kan. App. 383, 642 P.2d 574 (1982)

September 18, 1997 and that claimant was only authorized for an "evaluation". The Appeals Board believes respondent's definition of medical treatment is too narrow and therefore disagrees with respondent's characterization of the September 18 office visit. It is clear from Dr. Neel's progress notes that he saw his role as a continuation of his prior treatment when he stated that claimant was in his office for a "recheck". In fact, his recommendation that claimant return to Dr. Murati for trigger point injections is the same recommendation Dr. Neel made following claimant's September 13, 1996 office visit. Those progress notes conclude with the following recommendation: "Perhaps trigger point injections. I have suggested referral to a physiatrist, Dr. Murati, for further evaluation and treatment."

The Appeals Board would distinguish a disability rating examination or an independent medical examination requested solely for purposes of litigation from an examination for medical treatment. It appears, however, that Dr. Neel's September 18, 1997 examination was not requested for the purpose of determining the nature and extent of claimant's disability and no disability rating was given. A handwritten entry in Dr. Neel's September 18, 1997 progress notes reads "w/c not authorized after 9-18 visit per Skip w/Liberty Mutual." It appears that Dr. Neel was aware that claimant was only authorized for one office visit but no other limitation or direction for the visit appears in the record. Claimant requested additional treatment and was authorized to return to the same physician that had previously been authorized by respondent's insurance carrier to provide treatment. There is no reason to treat that office visit as anything other than authorized medical treatment that extends the time for serving a written claim for compensation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Medical Treatment entered May 28, 1998, by Special Administrative Law Judge William F. Morrissey, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
Eric T. Lanham, Kansas City, KS
William F. Morrissey, Special Administrative Law Judge
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director